

FEDERAL MARITIME COMMISSION
Office of the Administrative Law Judges

CROSS PATH CAPITAL LLC, *Claimant*

v.

BDP INTERNATIONAL INC., *Respondent*.

DOCKET NO. 2012(I)

Served: September 4, 2024

BEFORE: Theresa Dike, *Small Claims Officer*.

ORDER APPROVING SETTLEMENT AND DISMISSING PROCEEDING

On June 17, 2024, the Secretary of the Federal Maritime Commission issued a Notice of Filing of Small Claims Complaint and Assignment (“Notice”), stating that Claimant Cross Path Capital LLC (“Cross Path”) had filed an informal complaint against Respondent BDP International Inc. (“BDP”). Cross Path alleges that BDP violated the Shipping Act in connection with certain demurrage and detention fees it imposed on Cross Path’s containers. The Secretary instructed BDP to file a response to the complaint by July 12, 2024, and indicate whether it consents to the adjudication of the Claim under the informal procedures provided at Subpart S of the Commission’s Rules of Practice and Procedure (46 C.F.R. § 502.301-305).

On July 12, 2024, BDP filed a Motion to Dismiss Informal Complaint (“Motion”) in which it consented to the use of informal procedures for the adjudication of the proceeding but asserted that the complaint should be dismissed as invalid because it was not a sworn complaint and failed to state a claim because it did not indicate when the alleged cause of action accrued.

On July 22, 2024, the Chief Administrative Law Judge assigned this proceeding to the undersigned for adjudication. On July 22, 2024, the undersigned issued an order denying BDP’s motion and *sua sponte* granting extension of time until August 5, 2024, to Cross Path to submit an amended complaint that satisfied the Commission’s requirements for a filed complaint.

On August 15, 2024, Claimant submitted a Motion for Voluntary Dismissal (“Motion”) and a copy of a settlement agreement signed by both parties, requesting that its complaint against BDP be dismissed with prejudice pursuant to 46 C.F.R. § 502.72(a)(3), based on the parties’ settlement of their dispute.

The Commission’s Rule 72(a)(3) provides:

[A]n action may be dismissed at the complainant's request only by order of the presiding officer, on terms the presiding officer considers proper. If the motion is based on a settlement by the parties, the settlement agreement must be submitted with the motion for determination as to whether the settlement appears to violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

46 C.F.R. § 502.72(a)(3). Although Rule 72, governing dismissal of Commission proceedings, is not applicable to Subpart S proceedings, the undersigned used the rule as guidance for ruling on Claimant's request to dismiss the Claim.

The Commission's regulations allow settlements by litigating parties; however, the Commission requires that settlement agreements be submitted "for determination as to whether the settlement appears to violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable." *Maher Terminals v. The Port Authority of N.Y. & N.J.*, 34 S.R.R. 322, 325 (FMC 2016). In reviewing settlement agreements, the Commission is guided by its "strong and consistent policy of encouraging settlements and engaging in every presumption which favors a finding that they are fair, correct, and valid." *Maher Terminals*, 34 S.R.R. at 326 (quoting *APM Terminals North America, Inc. v. Port Authority of N.Y. & N.J.*, 31 S.R.R. 623, 626 (FMC 2009)).

"While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation." *Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1092 (ALJ 1978). However, if a "proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defect which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval." *Id.* at 1093. "[I]f it is the considered judgment of the parties that whatever benefits might result from the vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement." *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia – New Zealand Conf. and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988).

Claimant states in its motion that: "the settlement was reached through thorough negotiations between two well-informed Parties, both represented by counsel and representatives throughout the process." Motion at 3. Claimant further maintains that the "settlement is consistent with all applicable laws and public policies, is neither unjust nor discriminatory, and does not negatively impact any third parties or the broader shipping community . . . is both fair and reasonable, demonstrating the Parties' mutual interest in resolving their differences without the need for costly and unpredictable litigation." Motion at 3.

A review of the settlement agreement, which is signed by both parties, does not show any indicia of fraud, duress, undue influence, or mistake, and appears to reflect an arm's-length resolution between the parties. The terms appear to be fair, reasonable, and adequate.

Accordingly, the settlement agreement is approved, and this proceeding dismissed with prejudice, as requested.

The parties request confidentiality for their settlement agreement, asserting that the “Commission recognizes that settlement agreements often contain sensitive commercial information, and thus should be protected from public disclosure” Motion at 3 (citing *D.F. Young, Inc. v. NYKLine (North America) Inc.*, FMC Dkt No. 16-02 (FMC May 22, 2018).

“If parties wish to keep the terms of their settlement agreements confidential, the Commission, as well as the courts, have honored such requests.” *Al Kogan v. World Express Shipping, Transportation and Forwarding Services, Inc.*, 29 S.R.R. 68, 70 n.7 (ALJ 2000) (internal citations omitted); *Marine Dynamics v. R.T.M Line, Ltd.*, 27 S.R.R. 503, 504 (ALJ 1996); *International Association of NVOCCs v. Atlantic Container Line*, 25 S.R.R. 1607, 1609 (ALJ 1991). The parties’ request to keep the terms of their settlement agreement confidential is reasonable and thus granted.

Upon consideration of the proposed settlement, Claimant’s motion for voluntary dismissal, and for the reasons stated above, it is hereby

ORDERED that the settlement agreement be **APPROVED**. It is

FURTHER ORDERED that the request for confidentiality be **GRANTED**. It is

FURTHER ORDERED that this proceeding be **DISMISSED WITH PREJUDICE**.



Theresa Dike
Small Claims Officer